

SERVICE DATE - JANUARY 27, 1997

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-3 (Sub-No. 136X)

MISSOURI PACIFIC RAILROAD COMPANY--ABANDONMENT  
EXEMPTION--IN SHAWNEE COUNTY, KS

Decided: January 23, 1997

Missouri Pacific Railroad Company (MP)<sup>1</sup> filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon a 1.81-mile portion of the Topeka Industrial Lead from milepost 404.72 at the end of the line to milepost 406.53, near Topeka, in Shawnee County, KS. Notice of the exemption was served and published in the Federal Register on July 1, 1996 (61 FR 33958-59). The exemption was scheduled to become effective on July 31, 1996. On July 30, 1996, a decision and notice of interim trail use or abandonment (NITU) was served, which authorized a 180-day period for the City of Topeka, KS (City), to negotiate an interim trail use/rail banking agreement with MP for the right-of-way involved in this proceeding. The negotiation period under the NITU is scheduled to expire on January 27, 1997.<sup>2</sup>

On January 21, 1997, Kansas Horse Foundation and its affiliate, Serenata Farms School of Equestrian Arts (Collectively KHF) a new negotiation party, with UPRR's consent, filed a request to extend the NITU to July 27, 1997, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d), so that it could negotiate with UPRR for the use of the line as a trail. KHF states that the City is no longer in a position to proceed with negotiating with UPRR for interim trail use. KHF submitted a statement indicating its willingness to assume full financial responsibility for management of, and liability for payment of taxes for, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation for rail service. Considering this, and UPRR's concurrence on January 21, a NITU will be issued under 49 CFR 1152.29, with the trail use negotiating period running through July 27, 1997, as requested.

Trail use requests are accepted as long as the Board retains jurisdiction over the involved railroad right-of-way<sup>3</sup> and the

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<sup>1</sup> On January 1, 1997, MP merged into Union Pacific Railroad Company (UPRR); any reference to MP in this decision shall be understood to refer to UPRR.

<sup>2</sup> The July 30 decision also imposed a 180-day public use condition requiring MP to leave the right-of-way intact, including culverts, bridges, and similar structures (but not tracks, ties and signal equipment), for a period of 180 day from the July 31, 1996 effective date of the exemption (i.e., until January 27, 1997).

<sup>3</sup> See Rail Abandonment--Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company--Exemption--Abandonment in Waukesha County, WI, Docket No. AB-57

carrier is willing to enter into negotiations. Inasmuch as UPRR has not consummated the abandonment and is willing to negotiate with KHF for the right-of-way, a NITU will be issued, with the trail use negotiation period running until July 27, 1997. If no agreement is reached during this period, UP may fully abandon the line. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(1).

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice of exemption served and published in the Federal Register on July 1, 1996, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below until July 27, 1997.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specific date.
6. If an agreement for interim trail use/rail banking is reached by July 27, 1997, interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line.
7. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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(Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company--Abandonment--In Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).